

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

UCN, Inc.)

Transferee,)

WC Docket No. 05-198

Transtel Communications, Inc.)

Tel America of Salt Lake City, Inc.)

Extelcom, Inc.)

Transferors,)

RECEIVED

Joint International and Domestic Application for Authority)

Pursuant to Section 214 of the Communications Act of)

1934, as amended, to Transfer Certain Assets of Authorized)

International and Domestic Carriers)

AUG - 8 2005

Federal Communications Commission
Office of Secretary

**JOINT OPPOSITION OF TEL AMERICA OF SALT LAKE CITY, INC. AND UCN, INC.
TO PETITION FOR RECONSIDERATION**

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Dated: August 8, 2005

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Tel America of Salt Lake City, Inc. ("Tel America") and UCN, Inc. ("UCN"), through undersigned counsel and pursuant to Section 1.106(g) of the Commission's rules,¹ hereby submit the following opposition to the petition for reconsideration filed by APCC Services, Inc. ("APCC Petition") of the Commission Decision granting the above-captioned Section 214 Application.² For the reasons discussed herein, the Commission should affirm its Decision holding that the grant of the Section 214 Application served the public interest, and deny the APCC Petition.

¹ 47 C.F.R. § 1.106(g).

² Public Notice, Notice of Streamlined Domestic 214 Application Granted, WC Docket No. 05-198, DA 05-1795 (released June 27, 2005) (hereinafter referred to as "the Commission Decision" or "Decision").

I. BACKGROUND

On May 19, 2005, UCN and Transtel Communications, Inc., on behalf of its wholly-owned subsidiaries, Tel America and Extelcom, Inc. d/b/a Express Tel, jointly filed an application pursuant to Section 214 of the Communications Act of 1934, as amended,³ (referred to herein as the “Section 214 Application”) requesting authority to enable UCN to acquire certain assets of Express Tel and Tel America. The Section 214 Application demonstrated that the proposed transaction would serve the public convenience and necessity by making it possible for the customers of Tel America and Express Tel to receive from UCN improved services and availability of lower rates, thereby promoting competition in the telecommunications market.⁴ On May 25, 2005, the Commission released a Public Notice accepting the Section 214 Application as a streamlined application.⁵

On June 8, 2005, APCC filed comments asking the Commission to deny the Section 214 Application, condition its approval or remove it from streamlined processing⁶. Those comments inappropriately attempted to use the Commission’s transfer review process to affect the outcome of the same private billing dispute between APCC and Tel America that, at the time, was the subject of a Commission informal complaint proceeding. The Commission correctly decided that APCC’s private claim was an insufficient basis upon which to deny the Section 214 Application.⁷ This allowed Tel America and UCN to close on their transaction and migrate Tel America’s former customers to UCN’s network and billing platform. Tel America’s former

³ 47 U.S.C. § 214.

⁴ Section 214 Application, p. 5, Exh. A.

⁵ Public Notice, WC Docket No. 05-198, DA 05-1509 (May 25, 2005).

⁶ APCC Comments, pp. 1-2.

⁷ Commission Decision, p.2.

customers are now fully transferred to UCN where they receive stable, secure and improved telecommunications services, including advanced call handling features.

On July 27, 2005, APCC filed its petition for reconsideration of the Commission Decision, reiterating the same groundless arguments that the Commission properly decided were insufficient to deny the Section 214 Application. The APCC Petition is yet another inappropriate attempt to use the new customers of UCN as pawns to gain leverage in the collection of meritless and stale private claims. APCC makes no effort to show, nor can it, how the public interest would be served by disconnecting consumers from the improved service they are now receiving from UCN in order to further APCC's private dispute with Tel America.

Subsequent to the Decision on the Section 214 Application and the filing of APCC's Petition, the Commission's Enforcement Bureau decided against taking action on APCC's informal complaint and terminated the informal complaint proceeding.⁸ The Commission also advised APCC that if it was not satisfied with the Commission's disposition, it could file a formal complaint.⁹

II. DISCUSSION

The legal standard to be applied by the Commission under Section 214 of the Communications Act is whether the public interest, convenience and necessity would be served by the grant of the Section 214 Application.¹⁰ The Commission correctly applied that legal standard in this case, and properly granted the Section 214 Application.¹¹

⁸ Letter from Alexander P. Starr, Chief, Market Disputes Resolution Division, Enforcement Bureau, Federal Communications Commission to Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky, LLP, File No. EB-04-MDIC-0118, July 28, 2005 (herein referred to as the "Informal Complaint Decision").

⁹ Informal Complaint Decision, pp. 1-2.

¹⁰ 47 U.S.C. § 214.

¹¹ Commission Decision, pp. 2-3.

The public interest has been served by improving the stability and quality of the telecommunications services received by consumers that were once Tel America's customers. Those consumers now have access to a modern telecommunications platform and a whole new set of advanced call handling services from UCN, such as IVR, skills-based routing/ACD, the ability to integrate customer databases with call handling applications, and inNetwork® on-hold. By improving efficiencies and economies of scale for UCN, the Commission Decision will promote technological innovation and new or improved service offerings for consumers. Such improvements in UCN's services will stimulate competitors to improve their services in a like degree.

APCC has not disputed these public interest benefits. Nor has APCC challenged the qualifications of UCN as transferee. Instead, the APCC Petition alleges that the Commission Decision will impair its efforts to collect payment of disputed bills,¹² for which Tel America demonstrated in the informal complaint proceeding it had no payment obligation.

The Commission correctly followed legal precedent in deciding that APCC's disputed private claim is not relevant to the public interest analysis in a Section 214 transfer review proceeding, but should be addressed, if at all, in a separate proceeding.¹³ The DC Circuit has held that the imposition of restrictions on the grant of a transfer application is improper if it would serve the interests of a private claimant rather than those of the public.¹⁴ Furthermore, "the Commission is not at liberty... to subordinate the public interest."¹⁵ The appropriate public

¹² APCC Petition, pp. 4-5.

¹³ Commission Decision, pp. 2-3.

¹⁴ SBC Communications Inc. v. FCC, 56 F.3d 1484, 1491-1493 (DC Cir. 1995).

¹⁵ Id. at 1491.

interest analysis is whether the grant of the Section 214 Application will “adversely affect the public interest”, not whether it will hurt APCC.¹⁶

For the reasons enunciated by the DC Circuit, APCC’s private billing dispute with Tel America is not relevant to the public interest inquiry under Section 214.¹⁷ APCC erroneously contends that a disputed private claim that may be affected by the grant of a transfer application should, regardless of its merits, be treated differently than an unadjudicated claim that is used to challenge a transferee’s qualifications.¹⁸ The APCC Petition is rooted in the mistaken belief that the Commission should subordinate the public interest to protect APCC’s private claim.

In similar circumstances, the DC Circuit explicitly rejected the imposition of conditions on the grant of a transfer application for the purpose of protecting individual carriers against alleged harms they might suffer from such a grant.¹⁹ Specifically, BellSouth argued that the grant of the transfer application in that case without the MFJ’s restrictions would disadvantage BellSouth which was subject to those restrictions.²⁰ The Court held:

BellSouth gives us no reason to doubt the Commission’s conclusion; it argues in effect that the BOCs’ welfare should have been paramount in the Commission’s analysis...Finally, the Commission’s decision not to condition the merger as urged by BellSouth is reasonable. The conditions proposed by BellSouth, like BellSouth’s arguments generally, seem to be rooted in the mistaken belief that the Commission should protect competitors at the expense of consumers...Again, BellSouth would have the Commission serve that company’s own narrow interest rather than the broader public interest.²¹

¹⁶ Id. at 1495.

¹⁷ This is particularly true now that the Commission has decided that APCC’s claim does not warrant further consideration and has terminated the informal complaint proceeding.

¹⁸ APCC Petition, p. 4.

¹⁹ SBC Communications Inc. v. FCC, 56 F.3d at 1491-1493, 1495-1496.

²⁰ Id. at 1491-1492.

²¹ Id. at 1491-1493.

SBC also argued in that case that the grant of the transfer application would harm SBC by giving the transferee access to customer proprietary network information and sensitive information concerning competitors' network equipment.²² In rejecting SBC's argument, the Court held;

SBC's argument, like many of those reviewed above, seems to be not that the Commission's decision—here, its refusal to impose the condition—will hurt competition or otherwise adversely affect the public interest, but instead that it will hurt SBC.²³

APCC's allegations fall outside the scope of this proceeding, just as the claims of SBC and BellSouth did in SBC Communications, Inc. v. FCC. APCC would have the Commission serve its own narrow interests in a private billing dispute rather than the broader public interest. It seeks denial, delay or conditions that would benefit solely APCC and its members, but not the public. Its efforts to sink the instant transaction place in jeopardy the ability of Tel America's former customers to continue to receive improved service from UCN. Such an outcome clearly would not serve the public interest.

The APCC Petition also offers nothing more than unsupported speculation that a company would sell its assets just to avoid payphone compensation.²⁴ Such speculation cannot justify the imposition of conditions during the transfer review process, especially as here, where APCC is using it to gain leverage in a private dispute. Applications of Turner Broadcasting System, Inc. (Transferor) and Time Warner, Inc. (Transferee) For Consent to the Transfer of Control of License of Television Station WTBS(TV), Atlanta, Georgia, Memorandum Opinion and Order, 11 FCC Rcd 19595, 19609-19610 ¶ 31-35 (1996).

²² Id. at 1494-1495.

²³ Id.

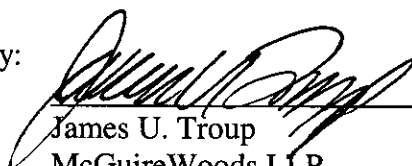
²⁴ APCC Petition, p. 5.

III. CONCLUSION

The Commission correctly decided that the grant of the Section 214 Application served the public interest, convenience, and necessity. The APCC Petition, however, seeks to undermine the public interest benefits that were made possible by that Commission Decision. To protect the public interest and preserve for consumers uninterrupted access to UCN's improved telecommunications services, Tel America and UCN urge the Commission to deny the APCC petition for reconsideration.

Respectfully submitted,

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Dated: August 8, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2005, I caused a copy of the foregoing Joint Opposition to Petition for Reconsideration to be served by electronic mail on the following:

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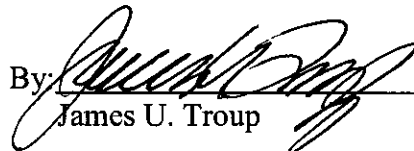
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